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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,848	12/20/2001	John William Tobin	F6145(C)	2553

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/027,848	TOBIN, JOHN WILLIAM	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 May 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,7-9,22 and 23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,7-9,22 and 23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4, 7, 9, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Anson (U.S. Patent No. 5584229)

Anson discloses a process wherein a beverage extract (including that prepared from tea; see Abstract) is created within a beverage brewing machine and heated to a temperature using a heated water solvent of 200 F (which it is expected would heat the or maintain the extract at a temperature within the range as called for through heating) wherein the heated solvent (56) acting as a heating means would be placed within the beverage extract created and not yet exiting the brewing chamber (26) and wherein a heated solvent from a different reservoir (110) is mixed with the heated extract as it leaves the brewing chamber. It should be further noted that the heating means is the heated solvent as it makes its way into and threw the brewing chamber. It should be further noted that Anson discloses an amount of the mixed in second heated solvent (referred to therein as "cold water" but which has., nevertheless, been heated) that would fall within the range of less than 45% as called for in the instant claims (see col. 4, lines 49-60). Moreover, it is clear from this disclosed passage that the coffee extract (which is combined with the second heated solvent) is much more than 0.1% (e.g. 50 ounces out of 64 ounces).

3. Claims 1, 2, 9, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Greenwald et al (2002/0130137)

Greenwald et al discloses a process wherein a beverage extract is heated within a brewing machine in a reservoir (see 3 in Figure 1) to a temperature which is less than or equal to that desired for dispensing the beverage (several conventional dispensing temperatures are cited, e.g. 168 F which would fall within the claimed range; see

paragraph 39). It should be noted that the beverage extract is heated by electrical current (see Figure 4, element 43). After maintaining a certain temperature for the extract in the (inevitably at some point the extract will need to be heated to maintain said desired temperature) the extract is then mixed with heated solvent from another reservoir (see 4 in Figure 1). It is expected that the extract of the cold reservoir would inherently provide much more than 0.1% of the prepared beverage with mixing of contents from both the cold and hot reservoirs. Due to the disclosure of the device within Greenwald et al being used with coffee and other beverages and the reference to previous beverage machines including those preparing tea, it is considered expected that the process of Greenwald et al applies as well to the treatment of tea beverages.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 2, 4, 7, 9, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anson (U.S. Patent No. 5584229)

If it is shown that Anson does not disclose heating the beverage extract to a temperature within the range as called for, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at same depending on, for example, the structure of the brewing chamber or how full same is wherein the ability for hot water to further heat or at least maintain the temperature of created extract as it leaves the coffee grounds and makes its way to the exit of the brewing chamber.

6. Claims 1, 2, 9, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwald et al (2002/0130137).

If it is shown that Greenwald et al does not disclose a process wherein a beverage extract is heated within a brewing machine in a reservoir (see 3 in Figure 1) to a temperature which is less than or equal to that desired for dispensing the beverage, it should be noted that Greenwald et al does suggest several conventional dispensing temperatures including at least one that falls within the range called for in the instant claims. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such

temperature as a matter of preference depending on, for example, cost involved, customer preference, and heating limitations of the equipment itself.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwald et al (2002/0130137).

Claim 22 further calls for heating means comprising a metal rod. Such is notoriously well known as taught, for example, elsewhere in Greenwald et al (e.g. Figure 3, element 31). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed said rod as a conventional alternative to employing electrical current for heating liquids from within.

8. Claims 1, 4-9, and 22 are rejected under 35 USC 103(a) as being unpatentable over Cornelius taken with Greenwald (U.S. Patent Application Publication 200/0130137) or with Kappenberg and Greenwald (U.S. Patent Application Publication 200/0130137).

The claims stand rejected for the reasons set forth in the last Office Action along with the following:

The instant claims now call for said beverage to be contacted with a heating means placed within the beverage extract wherein said heating means is heated with electrical current (or the heated solvent, or both) and wherein the heating means comprises a metal rod or pipe. It should be reiterated that Cornelius does set forth a chamber which is heated but is silent regarding the particular means employed to achieve same. Nevertheless, it is well known to heat beverages using, for example, electrical currents or by using heated rods as taught, for example, in Greenwald et al. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have heated said beverage extract in Cornelius as a matter of preference among conventional heating means known in the art.

9. Claim 8 is rejected under 35 USC 103(a) as being unpatentable over any one of Anson, Greenwald et al, Cornelius taken alone or Cornelius with Kappenberg and wherein same is further taken together with either one of JP 4-45748 or Weisberg et al.

If it is shown that Cornelius does not provide a process wherein the product is translucent and does not comprise visible particles of extract, the following should be noted. This also applies to the other primary references which are silent regarding this aspect of the instant invention. JP 4-45745 teaches providing clear coffee extract by adding an enzyme after heating same and would inherently provide for an absence of visible particles in the extract and subsequent beverage (if water added). Weisberg et al teaches a method of preparing a coffee extract which is clear and sediment free (e.g. claim 3 in Weisberg et al) and which would be clear and sediment free upon the addition of water. It would have been obvious to one having ordinary skill in the art at the time of

the invention to have employed such enzyme or extraction conditions as set forth in either one of JP 4-45745 and Weisberg et al, respectively to attain an aesthetically appealing beverage.

10. Claims 2 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwald et al further in view of Anson et al (U.S. Patent No. 4920871).

If it is shown that the invention of Greenwald et al does not disclose the process of treatment of tea extract the following should be noted. Beverage appliances are frequently used for both coffee and tea beverages as taught, for example, in Anson et al.. Moreover, in the "Background of the Invention" section Greenwald et al refers to previous attempts in working with tea extract in creating a tea beverage (see paragraph 9). It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the treatment to a tea product rather than coffee as a matter of preference among the "other beverages" suggested in Greenwald et al (see paragraph 16) and as a conventional dual use in appliances used to prepare hot beverages.

Response to Arguments

11. Applicant argues that Cornelius does not disclose heating of the coffee extract using electrical current or heated solvent as claimed (see Figure 2). Although Cornelius does disclose a heating chamber for coffee extract, the reference is silent regarding the particular way in which said extract is heated as well as the temperature employed. However, these missing limitations have been addressed in the rejections above.

Applicants argue that Kappenberg is related to heating coffee extract for reasons other than those contemplated by the instant invention. However, even if the motivation is different, the combination of references as applied still provides the invention as claimed. See In re Gershon et al, 152 USPQ USPQ 602; In re Graf, 145 USPQ 197; In re Finsterwolder, 168 USPQ 53.

All other arguments have been addressed in view of the rejections as set forth above.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
July 8, 2005